IN THE

Supreme Court of the United States

OCTOBER TERM, 1978.

No. 78-1059

THOMAS L. BEAGLEY, as President of and on behalf of the class of members of LOCAL 336, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO,

Petitioner,

VS.

LILLIAN B. ANDEL, ALICE M. AUGUSTINE, MICHAEL BEHAN, DOROTHY G. BLUNK, ROBERT L. FORTIN, GEORGE P. KAFORSKI, JOSEPH KIRKWOOD, REBA M. KNIGHT, PRISCILLA L. MURPHY, CLARENCE E. OTT, ELIZABETH J. POTOKAR, JACK G. PRONCUNIER and EVAN K. WILKIN, JR.,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ILLINOIS

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THOMAS L. BEAGLEY, as President of and on behalf of the class of members of LOCAL 336, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO,

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LILLIAN B. ANDEL, ALICE M. AUGUSTINE, MICHAEL BEHAN, DOROTHY G. BLUNK, ROBERT L. FORTIN, GEORGE P. KAFORSKI, JOSEPH KIRKWOOD, REBA M. KNIGHT, PRISCILLA L. MURPHY, CLARENCE E. OTT, ELIZABETH J. POTOKAR, JACK G. PRONCUNIER and EVAN K. WILKIN, JR.,

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PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ILLINOIS

The Petitioner, Thomas L. Beagley, as President of and on behalf of the members of Local 336, International Brotherhood of Electrical Workers, AFL-CIO, respectfully prays that a writ of certiorari issue to review the judgment of the Supreme Court of the State of Illinois entered in this proceeding on September 28, 1978, denying Petitioner's Petition For Leave to Appeal As a Matter of Right And In the Alternative Petition For Leave to Appeal. By denying

the aforesaid Petition, the Illinois Supreme Court thereby affirmed and adopted the decision and opinion of the Appellate Court of the State of Illinois, First District, rendered and issued on March 23, 1978.

OPINION BELOW.

The opinion of the Appellate Court of the State of Illinois, First District, is reported at 58 Ill.App.3d 588, 374 N.E.2d 929 (1978) and appears in the Appendix hereto. The judgment of the Supreme Court is not reported; a true and accurate copy of the docket entry (No. 50739) made on September 28, 1978, appears in the Appendix hereto.

JURISDICTION.

The judgment of the Supreme Court of Illinois denying the Petition For Appeal As of Right or Alternatively, Petition For Leave to Appeal was entered on September 28, 1978. The opinion of the First District Appellate Court affirming the order dismissing the present contract action entered in the Circuit Court of Cook County was entered on March 23, 1978. This Court's jurisdiction is invoked under 28 U.S.C. § 1257(3).

PRIOR PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

The present Petitioner has previously petitioned this Court for relief in related litigation filed in federal court. In that action, the Union sought to enjoin the employer from meddling in the state court fine collection action which is the subject of this present Petition. The case was *International Brotherhood of Electrical Workers, Local 336, AFL-CIO* v. *Illinois Bell Telephone Company,* Docket No. 74-34, October Term, 1974, certiorari denied 419 U.S. 879.

QUESTION PRESENTED.

Whether a state can constitutionally refuse to allow a labor union to sue in the courts of that state to enforce a written contract between the Union and its members? Whether such refusal of access to the state courts constitutes an impairment of contract and deprivation of equal protection of the laws under Article I, Section 10 and the Fourteenth Amendment to the Constitution of the United States.

UNITED STATES CONSTITUTIONAL PROVISIONS INVOLVED.

ARTICLE I, Section 10, United States Constitution:

> "No State shall . . . pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility."

Amendment XIV, Section 1:

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

ILLINOIS STATUTES INVOLVED.

Illinois Revised Statutes, 1967, Chapter 28, Para. 1:

> **1. Rule of decision.]** § 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly:* That the common law of England, so far as the same is applicable and of a general nature, and all statutes or acts of the British parliament made in aid of, and to supply the defects of the common law,

prior to the fourth year of James the First, excepting the second section of the sixth chapter of 43d Elizabeth, the eighth chapter of 13th Elizabeth, and ninth chapter of 37th Henry Eighth, and which are of a general nature and not local to that kingdom, shall be the rule of decision, and shall be considered as of full force until repealed by legislative authority.

STATEMENT OF THE CASE.

The Petitioner, Thomas L. Beagley, filed a complaint in the Circuit Court of Cook County, State of Illinois, in 1970, seeking to enforce the provisions of the Constitution and Bylaws of Local 336, International Brotherhood of Electrical Workers, AFL-CIO (hereinafter "Local 336" or "Union") against certain members who had crossed lawfully established picket lines and worked for the employer, Illinois Bell Telephone Company, during the 1968 strike against that company. The suit sought to collect certain fines (liquidated damages) levied against each member who had allegedly breached his voluntary contractual obligations under the provisions of Local 336's Constitution and Bylaws by crossing the picket line and working for the employer during the strike. The written contract, the Union Constitution and Bylaws, was attached in its entirety to the complaint and the sections breached were specifically designated.

At the time Beagley filed suit, he sued as President and Business Manager of the Union and as representative of the members of the Union. According to the Union Constitution, Beagley was also himself a member of Local 336.[1]

1. During the pendency of this action, Beagley's asserted representative capacity seemed to be the appropriate manner to proceed with the action. *Graham* v. *Board of Education,* 15 Ill. App.3d 1092, 305 N.E.2d 310 (5th Dist., 1973); *Illinois State Employees' Assoc.* v. *McCarter,* 9 Ill. App.3d 764, 292 N.E.2d 901 (4th Dist., 1973); *American Federation of Technical Engineers, Local 144* v. *LaJuenesse,* 25 Ill. App.3d 765, 324 N.E.2d 23 (1st Dist., 1975), rev. 63 Ill.2d 263, 347 N.E.2d 712; but see *Boozer* v. *United Auto Workers,* 4 Ill. App.3d 611, 279 N.E.2d 428 (1972).

In 1976 the Illinois Supreme Court reasserted the common law doctrine in Illinois (Ill. Rev. Stats., 1967, Ch. 28, para. 1) that a labor union was not an entity, natural or artificial, recognized by law and therefore had no capacity to sue in its own name. Obstensibly, if an action was to be initiated by a union, all members had to be joined as parties. This decision reversed the First District Appellate Court of the State of Illinois which had recognized the capacity of the Union to sue. *American Federation of Technical Engineers, Local 144 v. LaJeunesse,* 63 Ill.2d 263, 347 N.E.2d 712 (1976), reversing 25 Ill. App.3d 765, 324 N.E.2d 23.

Based on this decision, the Petitioner's complaint was dismissed; however, the Court refused to give Petitioner Beagley leave to amend so as to add additional union members to the suit as parties. As a result of this action, the Union has been deprived of all access to the state judiciary to enforce its Constitution and Bylaws.

REASONS FOR GRANTING THE WRIT.

I.

The Illinois Supreme Court Has Applied the Common Law Doctrine of a Union's Capacity to Sue In a Manner Which Effectively Forecloses Such Organizations From Seeking Judicial Relief to Enforce Their Contractual Obligations. This Construction Is Not in Accord With Applicable Decisions of this Court or the United States Constitution.

It is undisputed that the courts of the State of Illinois have long recognized that the provisions of a constitution and by-laws of an unincorporated association constitute a binding contract between and among their members. *Gratz* v. *Cozart,* 13 Ill.App.2d 515, 142 N.E.2d 833 (4th Dist. 1957); *Michel* v. *Carpenters' District Council of Madison County,* 12 Ill.App.2d 510, 104 N.E.2d 299 (1957). The contractual nature of an unincorporated association's constitution and by-laws was also upheld by the First District Appellate Court in *LaJeunesse,* 25 Ill.App.3d at 767-768; that portion

of the decision was not overruled either expressly or impliedly by the Illinois Supreme Court.

It is patently obvious that the State of Illinois could not expressly forbid labor unions from enforcing these written contracts with their members in state court. To do so would unquestionably impair the underlying contractual obligation. *United States Trust Company of New York* v. *State of New Jersey,* 431 U.S. 1, reh. den. 431 U.S. 975 (1977); *City of El Paso* v. *Simmons,* 379 U.S. 497 (1965); *Home Building and Loan Assoc.* v. *Blaisdell,* 290 U.S. 398 (1934).

Yet, by the application of the common law doctrine of standing, the State of Illinois has effectively foreclosed a labor union from the opportunity to enforce its constitution and bylaws—a recognized contractual right—in any Illinois state court. The Trial Court suggested that, regardless of the nominal plaintiffs, the *LaJeunesse* decision stood for the proposition that state courts would not entertain union fine suits absent specific legislation compelling them to do so. In the following language, the court seemed to adopt the construction that labor unions could not sue in state court to enforce written contracts in the form of union constitutions (the patently unconstitutional proposition described above):

> "However, in response, to justify, what I'm saying to you is this: That I think it was the intent of LaJuenesse (sic) to do away with these actions once and for all, and that's the reason they acted in the manner in which they did.
>
> Now, they also refer to certain cases that hold that the courts will not intervene, the judiciary will not intervene. I refer to 51 Illinois Second 389, 258 Illinois 98. Frankly, I don't know why they refer to 258 Illinois 98, because it doesn't seem to be in employ (sic), except for the fact that the courts in those cases held where voluntary associations, and grocery cooperative groups were involved in 51 Illinois, in those cases, they were attempting to enforce the by-laws and the constitution or whatever governed that particular group.
>
> They were attempting to enforce those by-laws and they held that the judiciary will not intervene in helping any voluntary association or cooperative group to enforce their by-laws and so on, and that's what they held.
>
> Now, this indicates that LaJuenesse (sic) wanted to do away with this type of action and wanted these voluntary associations interested in this type of thing, and in the enforcement or by-laws of these groups, to go in and have some law passed to modify the common law aspect of this whole situation." (Record, Circuit Court of Cook County, pp. 185-186)

The Defendants, however, would argue that *LaJeunesse* does not completely foreclose a union from suing in state court, it simply regulates the procedure and requires that all the members be joined as parties plaintiff. Obviously, in the case at bar such joinder was not allowed, thus making this argument inapplicable. However, the insurmountable difficulties of securing consent and joining several thousand members of Local 336[2] as plaintiffs in a single action makes the defendants' interpretation of *LaJuenesse* equally unconstitutional. This is especially true since the members who broke the strike must also be joined and consent to the filing of the action if *all* the members of the association must bring the action. The First District Appellate Court pointed out the problems attendant to such procedure in the following language:

> ". . . We note that such a procedure is frequently unworkable. When an unincorporated association is

2: Plaintiffs alleged in Paragraph "2" of their complaint that the membership in the union was in the thousands. Since this case was decided on a Motion to Dismiss, this allegation must be taken as true. Further, in the answer previously filed by the defendants, they admit the truth of this assertion.

sued, the plaintiff seldom has access to the names of all the members of the association. When the association sues, a listing of the names of all its members, in both the caption and the body of the complaint, is infeasible especially when the association has numerous members and is particularly impractical when the association is seeking relief against some of its members." 324 N.E.2d at 26.

The cases cited earlier explain that the Petitioner does not have to prove an absolute prohibition of access to court in order to establish an impairment of contract, if the State's action, without destroying a contract outright, derogates from substantial contractual rights or effectively reduces the value of said substantive contract rights, *United States Trust Co.* v. *New Jersey,* 431 U.S. 1, 19-20, fn. 17; *Blaisdell,* 290 U.S. 398, 431. Thus, the immense obstacles placed before a labor union in reaching a judicial hearing on the merits constitute an impairment of contract.

A review of the statute upon which *LaJeunesse* rests demonstrates that Illinois has no significant interest at stake to justify or outweigh the impairment. Historical anomaly is the only explanation for the present existence of the rule; present day insanity is the only basis for continuing to follow and apply it.

It is curious that Illinois gives access to its courts to all other injured parties in contract actions other than voluntary unincorporated associations (labor unions). Since this legislative classification scheme impairs fundamental rights of the ability to enter and enforce contractual relations, the State must show a compelling interest secured by the scheme to overcome an equal protection challenge. *Shapiro* v. *Thompson,* 394 U.S. 618 (1969); *Dunn* v. *Blumstein,* 405 U.S. 330 (1972); *San Antonio Independent School District* v. *Rodriguez,* 411 U.S. 1 (1973). Again, in framing this equal protection argument, Petitioner need not show that the legislation at issue totally deprives one class of a right

secured to the others. In *Dunn,* a waiting period that deferred the right to vote was found as unconstitutional as a total denial of that right.

The Court may search the record, but it will find no compelling state interest protected by this common law scheme.

CONCLUSION.

The Supreme Court cannot tolerate a state foreclosing a substantial portion of its population from utilizing its judicial system to enforce contractual obligations. Such flagrantly unconstitutional conduct must be reviewed and struck down. The right to civil adjudication of one's contractual (property) rights is basic to any society civilized enough to desire to deter the violent adjustment of personal disputes.

Respectfully submitted,

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APPENDIX

APPENDIX.

58 ILL.APP.3D 588,
374 N.E.2D 929

No. 76-1730

THOMAS L. BEAGLEY, as President of and on behalf of the class of members of LOCAL 336, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO,
Plaintiff-Appellant,

vs.

LILLIAN B. ANDEL, ALICE M. AUGUSTINE, MICHAEL BEHAN, DOROTHY G. BLUNK, ROBERT L. FORTIN, GEORGE P. KAFORSKI, JOSEPH KIRKWOOD, REBA M. KNIGHT, PRISCILLA L. MURPHY, CLARENCE E. OTT, ELIZABETH J. POTOKAR, JACK G. PRONCUNIER and EVAN K. WILKIN, JR.,
Defendants-Appellees.

Appeal from the Circuit Court of Cook County

Honorable FELIX M. BUOSCIO Presiding.

Mr. JUSTICE LORENZ delivered the opinion of the court:

Plaintiff appeals from an order dismissing his complaint and denying his motion for leave to amend. On appeal he contends that (1) the trial court abused its discretion in denying leave to amend the complaint, and (2) the court's dismissal of the complaint on the grounds that plaintiff lacked the standing and authority to sue was an unconstitutional denial of equal protection and an impairment of contractual rights.

The following facts are pertinent to the disposition of this appeal.

On March 25, 1970, a complaint was filed by plaintiff alleging, *inter alia,* that said organization is an unincorporated association and union; that he as president and business manager of the union brought this action on behalf of

the union's members in his representative capacity; that defendants, members of the union, had violated the union's constitution and the decision of its membership by refusing to honor a lawful strike and picket lines; that defendants were therefore tried, found guilty, and assessed fines by the union's executive board; and that they had failed to pay those fines. The complaint prayed that a judgment be entered against each defendant in the amount of his or her unpaid fine, and that the court grant whatever other relief it should deem proper.

Defendants filed a motion to dismiss the action on the ground that plaintiff lacked the standing and capacity to sue, citing *American Federation of Technical Engineers, Local 144 v. La Jeunesse* (1976), 63 Ill.2d 263, 347 N.E.2d 712. Plaintiff filed a motion to strike defendants' motion to dismiss, with alternative constitutional arguments to the granting of the motion, and at a subsequent hearing made an oral motion for leave to file an amended complaint to add additional and proper parties. Following that hearing, the trial court denied plaintiff's motion to strike, and ordered that the constitutional arguments contained therein were overruled. Plaintiff's motion for leave to file an amended complaint was also denied, and defendants' motion to dismiss was then sustained. After plaintiff filed a motion to reconsider, defendants filed a response in opposition, a hearing was had, and plaintiff's motion was denied.

OPINION.

Plaintiff first contends that the trial court abused its discretion in denying him leave to amend the complaint to add additional parties. Although plaintiff is correct in asserting that section 4 of the Civil Practice Act (Ill. Rev. Stat. 1975, ch. 110, par. 4) provides that all sections of the Act, including those relating to the amendment of pleadings and the addition of parties (see, Ill. Rev. Stat. 1975, ch. 110, pars. 45(4) and 46(1)), be liberally construed, leave to

amend the pleadings prior to the entry of the final judgment is a matter left to the sound discretion of the trial court. A denial of a motion to amend will only be reversed when there has been a manifest abuse of discretion. (*Mundt* v. *Ragnar Benson, Inc.* (1975), 61 Ill.2d 151, 335 N.E.2d 10; *Rank* v. *Rank* (1969), 107 Ill.App.2d 339, 246 N.E.2d 12.) The trial court dismissed this suit under the authority of *American Federation of Technical Engineers, Local 144* v. *La Jeunesse* (1976), 63 Ill.2d 263, 347 N.E.2d 712, in which, as in this case, a suit was brought by the president and representative of a union and voluntary unincorporated association seeking to recover unpaid fines which had been levied against several union members.

In *La Jeunesse*, the Illinois Supreme Court reaffirmed the common law rule that an action at law could not be brought by an unincorporated association or one of its executive officers in a representative capacity, but rather that all of the unincorporated association's members had to be joined in order for the court to acquire the jurisdiction to award money damages or other legal relief. (*American Federation of Technical Engineers, Local 144* v. *La Jeunesse* (1976), 63 Ill.2d 263, 347 N.E.2d 712; see also *Payne* v. *Collier* (1976), 38 Ill.App.3d 201, 347 N.E.2d 863.) Plaintiff argues that since he brought this suit not only in his representative capacity as president of the union, but also as an individual union member, his motion for leave to amend to add other union members should have been allowed. We disagree. In dismissing the action, the trial court stated that it had specifically examined the complaint and correctly found that plaintiff was suing in his representative capacity as president of the union, and not as an individual member thereof. Further, although it was not raised in *La Jeunesse*, it is implicit in that opinion that a union or its representative officer cannot avoid the dismissal which results from their lack of standing and capacity to sue simply by moving for leave to amend the complaint to bring in the members of the association and

thereby create a proper plaintiff. The denial of plaintiff's motion for leave to amend was therefore clearly within the sound discretion of the trial court.

Plaintiff nevertheless argues that leave to amend the complaint should have been granted, and cites *Flannery* v. *The People of the State of Illinois* (1907), 225 Ill. 62, 80 N.E. 60, as controlling precedent. In *Flannery,* appellants were found to be in contempt for violating an injunction, and on appeal the supreme court rejected their argument that because the suit for the injunction was brought in the name of a voluntary association, there was no proper party complainant before the court, the amendment adding as plaintiffs the members of the association could not have been properly made, and that the trial court had therefore lacked the jurisdiction to issue the injunction. Plaintiff in this case argues that an amendment to the complaint should have been allowed, as it was in *Flannery,* so that the defect in the complaint could have been cured by the addition of the union members. This argument is not persuasive, however, and plaintiff's reliance on *Flannery* is misplaced. In that case, although the action was filed in the name of an unincorporated association, that filing only occurred after all members of the association had affixed their signatures and seals to a statement attached to the complaint, consenting to the action, requesting that it be brought, and thereby indicating their submission to any of the court's orders. Our supreme court, therefore, found that the defect alleged by appellants "was of form, and not of substance," and was properly cured by the amendment which added the members of the association as complainants. (*Flannery* v. *The People of the State of Illinois* (1907), 225 Ill. 62, 66-67, 80 N.E. 60, 62.) In the instant case, the defect was not merely one of form, since the sole complainant was Thomas L. Beagley suing in his representative capacity for the union, and there was no indication whatsoever that all of the members of the union had requested or consented to the suit. Therefore, as we previously indicated, the action was properly dismissed and leave to amend was properly refused by the trial court.

Finally, plaintiff contends that the dismissal of his action under the common law rule, reaffirmed in *La Jeunesse,* that a union or its representative officer lacks the standing and authority to bring an action at law in a representative capacity is unconstitutional. He specifically argues that this ruling is a denial of equal protection of the laws in that it discriminates against unincorporated associations wishing to sue at law, and is also an impairment of the contractual rights of an association which seeks to collect the fines that it is contractually allowed to impose upon its members. Through these arguments, plaintiff seeks to attack the constitutionality of the ruling in *La Jeunesse* which, as we have indicated above, was properly applied by the trial court in this case. It is fundamental that appellate courts are without authority to overrule the supreme court or to modify its decisions. (*Anderson* v. *Anderson* (1976), 42 Ill.App.3d 781, 356 N.E.2d 788; *Union Starch & Refining Co., Inc.* v. *Dep't of Labor* (1972), 8 Ill. App.3d 406, 289 N.E.2d 692.) This principle along with our finding that the decision in *La Jeunesse* was properly applied by the trial court is therefore dispositive of plaintiff's constitutional arguments and of this appeal. As the supreme court noted in its opinion, changes in the common law rule which plaintiff attacks should come through legislative action. *American Federation of Technical Engineers, Local 144* v. *La Jeunesse* (1976), 63 Ill.2d 263, 266, 347 N.E.2d 712, 714.

Based on the foregoing, the judgment of the circuit court is affirmed.

Affirmed.

SULLIVAN, P.J. and MEJDA, J., concur.

SUPREME COURT, STATE OF ILLINOIS

September 28, 1978
Court Re-Convened at 2:00 P.M.

THE FOLLOWING LIST OF CASES ON THE LEAVE TO APPEAL DOCKET, SHOWING DISPOSITION THEREOF, WAS HANDED TO THE CLERK:

• • •

No. 50738—People State of Illinois, petitioner, vs. Leon McKinney, respondent. Leave to appeal, Appellate Court, Fifth District.

Petition for leave to appeal denied.

No. 50739—Thomas L. Beagley, etc., petitioner, vs. Lillian B. Andel, et al., respondents. Leave to appeal, Appellate Court, First District.

Petition for leave to appeal denied.

No. 50740—People State of Illinois, respondent, vs. Herriberto Rodriguez, petitioner. Leave to appeal, Appellate Court, First District.

Petition for leave to appeal denied.

IN THE

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OCTOBER TERM, 1978.

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Respondents.

BRIEF IN OPPOSITION TO THE PETITION FOR A WRIT OF CERTIORARI

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Respondents.

BRIEF IN OPPOSITION TO THE PETITION FOR A WRIT OF CERTIORARI

OPINION BELOW

The opinion of the Illinois Appellate Court is reported at 58 Ill. App. 3d 588, 374 NE2d 929 (1978), and appears in the appendix to the petition.

JURISDICTION

The jurisdictional requisites are adequately set forth in the petition.

QUESTION PRESENTED

Whether the common law rule that an unincorporated association cannot sue or be sued at law in the name of its president violates the federal Constitution.

STATUTE INVOLVED

The only statute involved is quoted on pages 3 and 4 of the petition. It merely provides that the common law controls in Illinois in the absence of statute. This was the rule in Illinois even before it became a state, and was enacted at the very first session of its legislature. Laws, 1819, p. 3; *Bulpit* v. *Mathews,* 145 Ill. 345, 34 NE 525, 526 (1893); *Penny* v. *Little,* 4 Ill. 301 (1841). It had its formal origin in Virginia in 1776, and was in force in Illinois when it was still a territory.

STATEMENT OF THE CASE

The statement of the case in the petition is adequate for this purpose, except that the footnote and the last sentence of that statement are incorrect.

ARGUMENT

I. There Is No Substantial Federal Question

The petition cites only two federal grounds for granting the writ—impairment of contracts, and denial of equal protection. Neither has the slightest substance here.

Illinois has not passed any "law impairing" or "denied" anything. It has merely observed a basic common law rule which was ancient in 1789. If an unincorporated association of any kind wishes to sue (or be sued) at law as an entity in Illinois courts it must first observe one of the simple statutory procedures for incorporation. Until it chooses to do that, it is not a separate entity in the eyes of the Illinois law, and must therefore sue and be sued in the names of its individual members, just as a partnership does. The Illinois Supreme Court has never used any other rule for suits at law. The Illinois legislature has not seen fit to change this rule, except in one respect not here involved. Ill. Rev. Stat., c. 30 § 185 (real estate).

This was the rule long before Local 336 was organized, and also when the events occurred in 1968 which produced this law suit. It was always a limitation on suits at law by Local 336, and also on any such suits which might be brought against it. Congress has seen fit to change that rule in certain suits brought under Section 301 of the Labor Management Relations Act. 29 USC 185. But it has not done so in any way which would affect the result of this case.

United States Trust Co. v. *New Jersey,* 431 U.S. 1 (1977), stressed on pages 6 and 8 of petitioner's brief, is completely different. In that case, New York and New Jersey agreed to an important contract clause in 1962, and later tried to repeal it by new laws passed in 1974. The *El Paso* and *Home Building* cases, cited in the same paragraph on page 6, approve new laws which changed the prior situation, and are even less in point for this petition. But Local 336 has not lost any contract rights; it never had the right which it now claims.

We do not contend that no common law rule can ever violate the Constitution, but we are unable to visualize a modern situation in which that could occur. The Constitution has always been drafted and interpreted by experts in the common law in the light of all of its principles and customs. It would take a much stronger argument than anything found in this petition to make the common law unconstitutional.

II. There Is No Issue of General Public Importance

So far as we can tell from this record, this is the only case in which this union has ever wanted to sue any of its members, and it involves only these 13 respondents

about ten years ago. It is not shown that this union or any other group has ever been seriously inconvenienced by the common law rule. Contrary to the statements in the petition, the Illinois courts have not refused to allow a union to sue at law, but rather have required that it sue in a traditional (and admittedly difficult) way. If the union had been the defendant, Illinois would have applied the same requirement to any plaintiff, *i.e.*, that he must name all of the union members as individuals. *Boozer* v. *United Auto Workers,* 4 Ill. App.3d 611, 279 NE2d 428 (1972); *Kingsley* v. *Amalgamated Meat Cutters,* 323 Ill. App. 353, 55 NE2d 554 (1944); *Cahill* v. *Plumbers Local 93,* 238 Ill. App. 123 (1925). Thus, the common law rule clearly benefits this union if it should be sued for damages. Nevertheless, this is the second time that petitioner has come all the way to this Court about this one tempest in a teapot, having lost each time in all of the lower courts. *I.B.E.W., Local 336* v. *Illinois Bell Telephone Co., certiorari denied,* 419 U.S. 879 (1974). *Gratz* v. *Cozart,* 13 Ill. App.2d 515, 142 NE2d 833 (1957), cited on page 5 of the petition, does allow a union to sue at law by first transferring its assets to a receiver.

The overall effect of the Illinois decisions is simply too localized and minor to warrant this Court's attention. Petitioner has not suffered the serious difficulties found in *Shapiro* v. *Thompson,* 394 U.S. 618 (1969), and the other cases cited near the bottom of page 8 of its brief. The whole matter is meaningless to most people. It is not even remotely comparable in importance to welfare, voting or school finances, which were the subjects of the three authorities there cited. The brief's sweeping language about "fundamental rights" and the alleged absence of a "compelling" state interest is only a gross exaggeration.

There is no conflict of decisions.

CONCLUSION

The petition should be denied and this ancient controversy closed.

Respectfully submitted,

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